All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

VIENNA DECLARATION AND PROGRAMME OF ACTION*

(Part I, para. 5)

* Adopted by the World Conference on Human Rights, Vienna, 25 June 1993 (A/CONF.157/24 (Part I), chap. III).

1. Introduction

International human rights law has been designed to protect the full range of human rights required for people to have a full, free, safe, secure and healthy life. The right to live a dignified life can never be attained unless all basic necessities of life—work, food, housing, health care, education and culture—are adequately and equitably available to everyone. Based squarely on this fundamental principle of the global human rights system, international human rights law has established individual and group rights relating to the civil, cultural, economic, political and social spheres.

The primary basis of United Nations activities to promote, protect and monitor human rights and fundamental freedoms is the International Bill of Human Rights. The Bill comprises three texts: the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966), and the International Covenant on Civil and Political Rights (1966) and its two optional protocols.[1]

These instruments enshrine global human rights standards and have been the inspiration for more than 50 supplemental United Nations human rights conventions, declarations and bodies of international minimum rules and other universally recognized principles. These additional standards have further refined international legal norms relating to a very wide range of issues, including women's rights, protection against racial discrimination, protection of migrant workers, the rights of children, and many others.

The two Covenants are international legal instruments. Thus, when Member and non-Member States of the United Nations ratify a Covenant and become a "State party" to it, they are willfully accepting a series of legal obligations to uphold the rights and provisions established under the text in question.

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[1] For the texts, see *Human Rights: A Compilation of International Instruments*, vol. I (2 parts), *Universal Instruments* (United Nations publication, Sales No. E.94.XIV.1).

When a State ratifies one of the Covenants, it accepts a solemn responsibility to apply each of the obligations embodied therein and to ensure the compatibility of their national laws with their international duties, in a spirit of good faith. Through the ratification of human rights treaties, therefore, States become accountable to the international community, to other States which have ratified the same texts, and to their own citizens and others resident in their territories.

This Fact Sheet examines many of the key issues relating to the International Covenant on Economic, Social and Cultural Rights, as well as the work of the Committee on Economic, Social and Cultural Rights which has been entrusted by the international community with monitoring compliance by States parties with the provisions of the Covenant. It is designed to provide a general overview of the Covenant and the Committee in order to assist with the continued strengthening of the enjoyment of economic, social and cultural rights for everyone, everywhere.

2. The indivisibility and interdependence of all human rights

Under international human rights law (as well as in terms of its application at the national level), civil and political rights have, in many respects, received more attention, legal codification and judicial interpretation, and have been instilled in public consciousness to a far greater degree, than economic, social and cultural rights. It is therefore sometimes wrongly presumed that only civil and political rights (right to a fair trial, right to equality of treatment, right to life, right to vote, right to be free from discrimination, etc.) can be subject to violation, measures of redress and international legal scrutiny. Economic, social and cultural rights are often viewed as effectively "second-class rights"—unenforceable, non-justiciable, only to be fulfilled "progressively" over time.

Such perspectives, however, overlook a postulate of the global human rights system formulated as long ago as 1948 with the adoption of the Universal Declaration of Human Rights, namely, that the indivisibility and interdependence of civil and political rights and economic, social and cultural rights are fundamental tenets of international

human rights law. This point of view has been repeatedly reaffirmed, most recently at the World Conference on Human Rights in 1993.[2]

Economic, social and cultural rights are fully recognized by the international community and throughout international human rights law. Although these rights have received less attention than civil and political rights, far more serious consideration than ever before is currently being devoted to them. The question is not whether these rights are basic human rights, but rather what entitlements they imply and the legal nature of the obligations of States to realize them.

Economic, social and cultural rights are designed to ensure the protection of people as full persons, based on a perspective in which people can enjoy rights, freedoms and social justice simultaneously. In a world where, according to the United Nations Development Programme (UNDP), "a fifth of the developing world's population goes hungry every night, a quarter lacks access to even a basic necessity like safe drinking-water, and a third lives in a state of abject poverty—at such a margin of human existence that words simply fail to describe it",[3] the importance of renewed attention and commitment to the full realization of economic, social and cultural rights is self-evident.

Despite significant progress since the establishment of the United Nations in addressing problems of human deprivation, well over one billion people live in circumstances of extreme poverty, homelessness, hunger and malnutrition, unemployment, illiteracy and chronic ill-health. More than 1.5 billion people lack access to clean drinking-water and sanitation, some 500 million children don't have access to even primary education; and more than one billion adults cannot read and write. This massive scale of marginalization, in spite of continued global economic growth and development, raises serious questions, not only of development, but also of basic human rights.

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[2] One of the central reaffirmations of the equal nature of these two sets of rights is found in General Assembly resolution 32/130 of 16 December 1977, which asserts (para. 1):

"(*a*) All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights;

"(*b*) The full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible; the achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development, as recognized by the Proclamation of Teheran of 1968;

"..."

[3] UNDP, *Human Development Report 1994* (Oxford University Press, 1994), p. 2.

Of all global human rights standards, the International Covenant on Economic, Social and Cultural Rights provides the most important international legal framework for protecting these basic human rights.

3. International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (see annex I) was adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966, following almost 20 years of drafting debates. It finally gained the force of law a decade later, entering into force on 3 January 1976.

The Covenant contains some of the most significant international legal provisions establishing economic, social and cultural rights, including rights relating to work in just and favourable conditions, to social protection, to an adequate standard of living, to the highest attainable standards of physical and mental health, to education and to enjoyment of the benefits of cultural freedom and scientific progress.

As at 12 April 1996, 133 States had ratified the Covenant (see annex II) thereby voluntarily undertaking to implement its norms and provisions.

Compliance by States parties with their obligations under the Covenant and the level of implementation of the rights and duties in question is monitored by the Committee on Economic, Social and Cultural Rights.

The Committee works on the basis of many sources of information, including reports submitted by States parties and information from United Nations specialized agencies—International Labour Organisation, United Nations Educational, Scientific and Cultural Organization, World Health Organization, Food and Agriculture Organization of the United Nations—from the Office of the United Nations High Commissioner for Refugees, and from the United Nations Centre for Human Settlements (Habitat) and others. It also receives information from non-governmental and community-based organizations working in States which have ratified the Covenant, from international human rights and other non-governmental organizations, from other United Nations treaty bodies, and from generally available literature.

4. Substantive provisions of the International Covenant on Economic, Social and Cultural Rights

Self-determination

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Article 1 of the Covenant is worded in precisely the same terminology as article 1 of its sister text, the International Covenant on Civil and Political Rights. The self-determination provisions in common article 1 are particularly important because the realization of this right is a fundamental prerequisite for the effective guarantee and observance of individual human rights and is pivotal in securing and strengthening human rights protection measures.

The right to self-determination is a cornerstone of the international legal system, and has been a premier concern of the international community since the creation of the United Nations in 1945, particularly in regard to issues such as independence, non-interference and democracy. This right has both external and internal dimensions and has been the subject of some controversy in recent years, as it is increasingly asserted by groups within countries, as distinct from ex-colonies and occupied countries.

As far as the rights contained in the Covenant are concerned, the right of peoples freely to pursue their economic, social and cultural development includes freedom to carry on economic, social and cultural activities.

Obligations of States parties

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 2 is one of the most important articles of the Covenant because it outlines the nature of States parties' legal obligations under the Covenant and determines how they must approach the implementation of the substantive rights contained in articles 6 to 15.

Any analysis of obligations relating to economic, social and cultural rights cannot be isolated from the obligations inherent in securing the individual entitlements of the beneficiaries of the right(s) in question. Most frequently, obligations are divided into "layers" reflecting duties to (*a*) respect, (*b*) protect, (*c*) promote, and (*d*) fulfil each of the rights contained in the Covenant. Each of these legal responsibilities can take on more specific obligations of "conduct" (e.g. action or inaction) and obligations of "result" (e.g. ends).

"*undertakes to take steps . . . by all appropriate means, including particularly the adoption of legislative measures*"

This provision from article 2, paragraph 1, requires all States parties to begin immediately to take measures towards the full enjoyment by everyone of all the rights in the Covenant. The adoption of legislation will, in many cases, be indispensable if economic, social and cultural rights are to be made real, but laws alone are not a sufficient response at the national level. Administrative, judicial, policy, economic, social and educational measures and many other steps will be required by Governments in order to ensure these rights to all.

Under article 2, paragraph 1, States parties are legally obliged to undertake legislative action in some instances, particularly when exist-

ing laws are clearly incompatible with the obligations assumed under the Covenant. This would be the case when, for instance, a law in a given country was patently discriminatory or had the express effect of preventing the enjoyment of any of the rights in the Covenant, or when legislation allowed the violation of rights, especially in terms of negative duties of States. Laws allowing Governments forcibly to remove people from their homes, evicting them without due process of law, would have to be amended in order to bring domestic legislation into conformity with the Covenant.

"*to [achieve] progressively the full realization of the rights*"

The "progressive obligation" component of the Covenant is often mistakenly taken to imply that only once a State reaches a certain level of economic development must the rights established under the Covenant be realized. This is not the intent of this clause. Rather, the duty in question obliges all States parties, notwithstanding their level of national wealth, to move immediately and as quickly as possible towards the realization of economic, social and cultural rights. This clause should never be interpreted as allowing States to defer indefinitely efforts to ensure the enjoyment of the rights laid down in the Covenant.

Whereas certain rights, by their nature, may be more apt to be implemented in terms of the "progressive obligation" rule, many obligations under the Covenant are clearly required to be implemented immediately. This would apply especially to non-discrimination provisions and to the obligation of States parties to refrain from actively violating economic, social and cultural rights or withdrawing legal and other protection relating to those rights.

The Committee on Economic, Social and Cultural Rights has asserted that this duty exists independently of an increase in available resources and thus recognizes that all existing resources must be devoted in the most effective way possible to the realization of the rights enshrined in the Covenant.

"*to the maximum of its available resources*"

Like the "progressive realization" provision, this standard is also used to justify the non-enjoyment of rights. However, as recognized in the Limburg Principles on the Implementation of the International

Covenant on Economic, Social and Cultural Rights,[4] this requirement obliges States parties to ensure minimum subsistence rights for everyone, regardless of the level of economic development in a given country.

The term "available resources" applies both to domestic resources and to any international economic or technical assistance or cooperation available to a State party. In the use of available resources, due priority should be given to the realization of rights recognized in the Covenant, considering the need to assure to everyone the satisfaction of subsistence requirements, as well as the provision of essential services.

"*without discrimination*"

Article 2, paragraph 2, requires States parties to ensure the provision of judicial review and other recourse procedures should discrimination occur. Importantly, the grounds of discrimination mentioned in this provision are not exhaustive and thus certain other forms of unfair discrimination negatively affecting the enjoyment of the rights enunciated in the Covenant (for instance, on the basis of sexual orientation) must be prevented.

According to the Limburg Principles, special measures taken for the sole purpose of securing adequate advancement of certain groups or individuals requiring protection in order to ensure their equal enjoyment of economic, social and cultural rights are not considered discrimination, provided that such measures do not lead to the maintenance of separate rights for different groups and are not continued after their objectives have been achieved. This applies, for example, to affirmative-action programmes.

This provision not only obliges Governments to desist from discriminatory behaviour and to alter laws and practices which allow discrimination, it also applies to the duty of States parties to prohibit private persons and bodies (third parties) from practising discrimination in any field of public life.

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[4] Approved by a group of experts in international law meeting at Maastricht (Netherlands) from 2 to 6 June 1986. See *Human Rights Quarterly*, vol. 9, No. 2 (May 1987), p. 122. Text reproduced in United Nations document E/CN.4/1987/17, annex.

Equal rights for men and women

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Women often suffer substantial and disproportionate difficulties in securing human rights, including economic, social and cultural rights. Article 3 guarantees that men and women possess precisely the same legal entitlement to the rights set forth in the Covenant and that, if necessary, special measures will be employed by States parties to ensure that this position of equality is attained.

The Covenant provides a framework for instigating progressive and immediate measures such that women may enjoy on an equal footing rights which have often been denied them. For instance, the housing rights provisions in article 11, paragraph 1, of the Covenant must apply to men and women equally, and thus women must be accorded equal rights to housing inheritance—something which is still not the case in many countries. Together, article 3 and article 2, paragraph 2, thus provide significant legal protection against all forms of discrimination in the pursuit of economic, social and cultural rights.

Limitations

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

Articles 4 and 5 were not intended by the drafters of the Covenant to be overly permissive of the imposition of limitations by the state on the rights provided for. Rather, these provisions are formulated in such a manner as to be protective of the rights of individuals. They are also not designed to introduce limitations on rights affecting the subsistence or survival of the individual or the integrity of the person.

If a State party finds it necessary to invoke the provisions of these articles, it may do so only if this is provided for by law and only if the measures in question are consistent with the Covenant. Such measures cannot be applied in an arbitrary, unreasonable or discriminatory way. Moreover, individuals should have legal safeguards and effective remedies against illegal or abusive imposition of limitations on economic, social and cultural rights.

The term "democratic society" (art. 4) further restricts the imposition of limitations under the Covenant and thus the burden rests on the State to prove that any limitations do not impair the democratic functioning of society.

None of the provisions in the law relating to any limitation may be interpreted in such a way as to nullify any of the rights or freedoms recognized in the Covenant. The main purpose of article 5, paragraph 2, is to ensure that no provision of the Covenant is interpreted so as to prejudice provisions of domestic law or any other legal instrument already in force, or which may come into force, under which more favourable treatment would be accorded to persons protected.

The right to work

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Freely chosen work remains an essential part of being human. For many people, whether employed in the formal or informal sectors, work represents the primary source of income on which subsistence, survival and life depend. The right to work is fundamental to the enjoyment of certain subsistence and livelihood rights such as food, clothing,

housing, etc. Moreover, one's working status may easily affect the enjoyment of other rights relating to health and education. The right to work is increasingly important as Governments the world over continue to withdraw from the provision of basic services, leaving these to market forces and non-governmental actors.

The right to work is fundamental to ensuring the dignity and self-respect of the beneficiaries of the rights contained in the Covenant. Article 6 obliges States parties to refrain from instigating or allowing forced labour. The Committee on Economic, Social and Cultural Rights has examined this article in terms of the implementation of policies and measures aimed at securing work for all who are available to work. This right encompasses, therefore, both the right to enter into employment and the right not to be unjustly deprived of work. Although unemployment persists in all States parties, these States must apply the basic principles set out in article 2 for ensuring the full realization of the right to work.

The right to just and favourable conditions of work

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(*a*) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(*b*) Safe and healthy working conditions;

(*c*) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(*d*) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 7 establishes a right to a minimum remuneration for employment, stipulating fair wages sufficient to guarantee a decent living, as well as working conditions that are just and favourable. Wages must be equitable and just in order to be considered fair.

This article relates closely to a large number of conventions adopted by the International Labour Organisation, including the Minimum Wage Fixing Convention (No. 131, 1970) and the Equal Remuneration Convention (No. 100, 1951).

People must be afforded minimum conditions of occupational health and safety, and States parties are responsible for adopting policies and laws to that end. A coherent national policy in this regard is incumbent on all States parties.

The standards laid down in article 7 also relate to the duties of States parties to reduce the working week in a progressive manner and to ensure that workers enjoy adequate rest and holidays. For all aspects of this article, States parties must establish a baseline or minimum standard below which the working conditions of no worker should be allowed to fall; they must also develop enforcement measures guaranteeing these rights.

The right to form and join trade unions

Article 8

1. The States Parties to the present Covenant undertake to ensure:

(*a*) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(*b*) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(*c*) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(*d*) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

The right to form and join trade unions is closely linked to the right to freedom of association, which is widely recognized throughout international human rights law. These rights, combined with the right to strike, are fundamental if the rights of workers and other citizens under the Covenant are to be implemented.

Article 8 provides for a right not to be compelled to join a particular trade union, in accordance with the term "of his choice" (para. 1 (*a*)). It also includes the right to federate or confederate, which should not be subject to state control. The right to collective bargaining, the right to protection from dissolution or suspension and the right to strike are also protected.

States parties are allowed some measure of discretion concerning the implementation of article 8, as evidenced by the language concerning limitations in the interests of national security, public order and the rights and freedoms of others. These grounds for exemption, however, must be interpreted narrowly by States parties seeking to invoke them.

With regard to national security concerns, for instance, the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights[5] stress that

> the systematic violation of economic, social and cultural rights undermines true national security and may jeopardize international peace and security. A State responsible for such violation shall not invoke national security as a justification for measures aimed at suppressing opposition to such violation or at perpetrating repressive practices against its population. (Principle 65.)

The right to social security and social insurance

Article 9

> The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

A large number of States do not maintain adequate social security or social insurance provisions under domestic laws protecting people in circumstances such as old age, disability, ill health or other situations not allowing them to earn a decent living. At the same time, many countries which do provide such protection are beginning to transfer responsibility for these matters from the state to the private sector. These issues raise serious concerns regarding enjoyment of the rights contained in the Covenant.

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[5] See footnote 4 above.

The Committee on Economic, Social and Cultural Rights specifically asks States parties whether they maintain social security schemes in the following areas: medical care, cash sickness benefits, maternity benefits, old-age benefits, invalidity benefits, survivors' benefits, employment injury benefits, unemployment benefits and family benefits.

The Committee has devoted particular attention to enjoyment of the rights provided for in article 9 by women, older persons (General Comment No. 6 (1995)),[6] and persons with disabilities (General Comment No. 5 (1994)).[7]

Protection and assistance for the family

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 10 provides protection for the family, mothers and children. It includes the right to enter freely into marriage, raising doubts as to the situation in countries where marriage occurs without the free and informed consent of one or another spouse, almost invariably the woman. Mothers are to be accorded substantial protection before and after childbirth. The Committee on Economic, Social and Cultural Rights regularly requests information from States parties as to whether any particular groups of women lack such protection.

The Committee has not spent a great deal of time examining situations relating to family rights, but has devoted increased attention to the rights of the child as they are established under article 10, para-

[6] E/1996/22, annex IV.

[7] E/1995/22, annex IV.

graph 3. It has paid particular attention to child labour and the living conditions of children. The most intensive work within the United Nations system on children's rights is carried out by the Committee on the Rights of the Child, with which the Committee on Economic, Social and Cultural Rights works closely.

The right to an adequate standard of living

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programmes, which are needed:

(*a*) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(*b*) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 11 incorporates a broad range of concerns relating to the lives and livelihoods of residents of States parties, in particular food, clothing and housing. The Committee on Economic, Social and Cultural Rights has devoted extensive attention to this article, particularly as it relates to the human right to adequate housing. To date, the right to adequate housing is the only right in the Covenant which has had an entire general comment devoted to it (General Comment No. 4 (1991)).[8]

General Comment No. 4 reveals the extensive nature of the protection included under article 11 and elaborates legal interpretations of the right to adequate housing which go far beyond restricted visions of this right as simply a right to shelter. In it, the Committee, which has given more attention to the right to housing than to any other right under the Covenant, states;

. . . the right to housing should not be interpreted in a narrower restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's

[8] E/1992/23, annex III.

head . . . Rather it should be seen as the right to live somewhere in security, peace and dignity. . . . (Para. 7.)

The Committee has defined the term "adequate housing" to comprise security of tenure, availability of services, affordability, habitability, accessibility, location and cultural adequacy.

Article 11 does not imply a stagnant state of affairs, but also includes a right "to the continuous improvement of living conditions" (para. 1) and the possibilities associated with international cooperation in the event of States parties being unable to guarantee the rights in question. This is particularly relevant in times of food crises or famine.

The Committee has decided on several occasions that certain States parties had violated provisions of article 11, particularly as a result of the practice of forced evictions. This is indicative of the seriousness which the Committee accords article 11.

The right to the highest attainable standard of physical and mental health

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(*a*) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(*b*) The improvement of all aspects of environmental and industrial hygiene;

(*c*) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(*d*) The creation of conditions which would assure to all medical service and medial attention in the event of sickness.

Recognition of the right to health obviously does not mean that beneficiaries of this right have a right to be healthy. Rather, the Covenant stresses the obligation of States parties to ensure for their citizens "the highest attainable standard of . . . health".

Article 12 therefore places emphasis on equal access to health care and minimum guarantees of health care in the event of sickness.

The Committee on Economic, Social and Cultural Rights has spent increasing energy on clarifying and monitoring health rights, having held a general discussion on the topic and adopted a general

comment on the rights of persons with disabilities (General Comment No. 5 (1994)). The rights of people with HIV/AIDS have also received increasing attention from the Committee in recent years.

The right to education

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(*a*) Primary education shall be compulsory and available free to all;

(*b*) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(*c*) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(*d*) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(*e*) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes within two years, to work out and adopt a detailed plan of action for the progressive implementation, within

a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Articles 13 and 14 recognize that education is a fundamental precondition for the enjoyment and assertion of human rights and that education strengthens human rights and basic democratic principles. The international community has long recognized these basic truths and has proclaimed the decade 1995-2004 the United Nations Decade for Human Rights Education.[9] The Committee on Economic, Social and Cultural Rights held a general discussion on this topic in 1994.

These two articles guarantee all children a right to free and compulsory primary education, wherever they may live. They also enshrine the right to equal access to education and equal enjoyment of education facilities; the freedom to choose education and to establish educational institutions; the protection of pupils against inhuman disciplinary measures; and academic freedom.

The right to culture and to benefit from scientific progress

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

(*a*) To take part in cultural life;

(*b*) To enjoy the benefits of scientific progress and its applications;

(*c*) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and cooperation in the scientific and cultural fields.

The rights to enjoy culture, to participate in cultural life and to benefit from technological and scientific progress form the foundation of article 15. Although these issues may not seem to be matters of human rights, they are of fundamental importance to the principles of equality of treatment, freedom of expression, the right to receive and impart information, and the right to the full development of the human personality.

[9] See General Assembly resolution 49/184 of 23 December 1994.

Cultural attributes can often be attacked or derided by States in attempts to favour one national, racial or ethnic group over another, to cite but one example of how important the rights in question are. Moreover, these rights include the right to participate in the life of society, giving a wide reading to the term "culture".

The right to benefit from scientific progress and its applications is designed to ensure that everyone in society can enjoy advances in this regard, in particular disadvantaged groups. It includes the right of everyone to seek and receive information about such advances resulting from new scientific insights and to have access to any developments which could enhance their enjoyment of the rights contained in the Covenant.

5. Applicability of the Covenant within domestic law

... There must be a concerted effort to ensure recognition of economic, social and cultural rights at the national, regional and international levels.

VIENNA DECLARATION AND PROGRAMME OF ACTION[10]

(Part II, para. 98)

Although the Committee on Economic, Social and Cultural Rights can assist in the implementation of the Covenant from an international perspective, the ultimate effectiveness of this instrument is contingent on the measures taken by Governments to give actual effect to their international legal obligations. In this regard, the Committee has recognized the essential importance of the adoption by States of appropriate legislative measures and the provision of judicial remedies, indicating the very real legal nature of economic, social and cultural rights.[11]

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[10] Adopted by the World Conference on Human Rights, Vienna, 25 June 1993 (A/CONF.157/24 (Part I), chap. III).

[11] See Craven, "The domestic application of the International Covenant on Economic, Social and Cultural Rights", *Netherlands International Law Review*, vol. XL (1993), p. 367.

The necessity of implementing the provisions of the Covenant through domestic legislation is consistent with article 27 of the 1969 Vienna Convention on the Law of Treaties, which states that "a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty". Indeed, the Covenant often requires legislative action to be taken in cases where existing legislation is in violation of the obligations assumed under the Covenant.

The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights[12] emphasize that "States parties shall provide for effective remedies, including, where appropriate, judicial remedies" (principle 19). Because there does not yet exist an individual complaints procedure under the Covenant, the full implementation of the rights which this instrument contains is all the more dependent on the provision of appropriate laws and remedies at the national level.

At minimum, the national and local judiciaries of States parties must consider international human rights laws such as the Covenant an interpretative aid to domestic law and ensure that domestic law is interpreted and applied in a manner consistent with the provisions of international human rights instruments ratified by the State. From the perspective of international law, the underlying principle is that courts should avoid placing their Government in violation of the terms of an international treaty which it has ratified.[13]

Regarding the justiciability of the rights contained in the Covenant—i.e. the possibility of their being subjected to judicial review—the Committee has stated in its General Comment No. 3 (1990):[14]

> Among the measures which might be considered appropriate, in addition to legislation, is the provision of judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justiciable. . . . (Para. 5.)

In this regard, the Committee has indicated that a number of articles in the Covenant are capable of immediate implementation, including article 3, article 7, subparagraph (*a*) (i), article 8, article 10, paragraph 3, article 13, paragraphs 2 (*a*), 3 and 4, and article 15, paragraph 3. It has also stressed, with respect to the right to adequate

[12] See footnote 4 above.

[13] See P. Alston and G. Quinn, "The nature and scope of States parties' obligations under the International Covenant on Economic, Social and Cultural Rights", *Human Rights Quarterly*, vol. 9, No. 2 (May 1987), p. 171.

[14] E/1991/23, annex III.

housing, for example, that "instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law".[15] In order to put such obligations into effect domestically, national courts would obviously have an important role to play in ensuring respect for the rights in question.

6. Monitoring the implementation of the Covenant: the Committee on Economic, Social and Cultural Rights

Creation and composition of the Committee

Unlike the five other human rights treaty bodies, the Committee on Economic, Social and Cultural Rights was not established by its corresponding instrument. Rather, the Economic and Social Council (ECOSOC) created the Committee, following the less than ideal performance of two previous bodies entrusted with monitoring the Covenant.

The Committee was established in 1985, met for the first time in 1987 and has to date held 14 sessions. Meeting initially on an annual basis, the Committee currently convenes twice a year, holding two three-week sessions, generally in May and November/December. It holds all its meetings at the United Nations Office at Geneva.

The Committee is comprised of 18 members who are experts with recognized competence in the field of human rights. Members of the Committee are independent and serve in their personal capacity, not as representatives of Governments. At present, the Committee is made up of 13 men and five women. The Committee itself selects its chairperson, three vice-chairpersons and rapporteur.

[15] General Comment No. 4 (1191) (E/1992/23, annex III), para. 18.

Members of the Committee are elected by ECOSOC for four-year terms, and are eligible for re-election if renominated. The Committee is thus a subsidiary organ of ECOSOC and derives its formal authority from that body. Elections take place in a secret ballot from a list of nominees proposed by States parties to the Covenant. States which have not ratified the Covenant cannot, therefore, nominate their own nationals for positions on the Committee. The principles of equitable geographical distribution and the representation of different social and legal systems guide the selection process. The Committee is serviced by the United Nations Centre for Human Rights.

What does the Committee do?

The primary function of the Committee is to monitor the implementation of the Covenant by States parties. It strives to develop a constructive dialogue with States parties and seeks to determine through a variety of means whether or not the norms contained in the Covenant are being adequately applied in States parties and how the implementation and enforcement of the Covenant could be improved so that all people who are entitled to the rights enshrined in the Covenant can actually enjoy them in full.

Drawing on the legal and practical expertise of its members, the Committee can also assist Governments in fulfilling their obligations under the Covenant by issuing specific legislative, policy and other suggestions and recommendations such that economic, social and cultural rights are more effectively secured.

How do States parties report to the Committee?

Under articles 16 and 17 of the Covenant, States parties undertake to submit periodic reports to the Committee—within two years of the entry into force of the Covenant for a particular State party, and thereafter once every five years—outlining the legislative, judicial, policy and other measures which they have taken to ensure the enjoyment of the rights contained in the Covenant. States parties are also requested to provide detailed data on the degree to which the rights are implemented and areas where particular difficulties have been faced in this respect.

The Committee has assisted the reporting process by providing States parties with a detailed 22-page set of reporting guidelines speci-

fying the types of information the Committee requires in order to monitor compliance with the Covenant effectively.

The reporting requirement is much more than simply a formalistic commitment. Although the reporting process is imbued with a number of difficulties, not the least of which are the non-submission of reports by a large number of States parties and problems relating to resource constraints of States, this mechanism has a number of important functions. Among these are the initial review function, the monitoring function, the policy formulation function, the public scrutiny function, the evaluation function, the function of acknowledging problems and the information-exchange function.[16]

The Committee has emphasized that reporting obligations under the Covenant, fulfil seven key objectives. In its General Comment No. 1 (1989), the Committee stated these objectives as follows:

1. to ensure that a State party undertakes a comprehensive review of national legislation, administrative rules and procedures, and practices in order to assure the fullest possible conformity with the Covenant;

2. to ensure that the State party regularly monitors the actual situation with respect to each of the enumerated rights in order to assess the extent to which the various rights are being enjoyed by all individuals within the country;

3. to provide a basis for government elaboration of clearly stated and carefully targeted policies for implementing the Covenant;

4. to facilitate public scrutiny of government policies with respect to the Covenant's implementation, and to encourage the involvement of the various sectors of society in the formulation, implementation and review of relevant policies;

5. to provide a basis on which both the State party and the Committee can effectively evaluate progress towards the realization of the obligations contained in the Covenant;

6. to enable the State party to develop a better understanding of problems and shortcomings impeding the realization of economic, social and cultural rights;

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[16] P. Alston, "The purposes of reporting", in *Manual on Human Rights Reporting* (United Nations Centre for Human Rights/United Nations Institute for Training and Research, 1991) (Sales No. E.91.XIV.1), pp. 14-16.

7. to facilitate the exchange of information among States parties and to help develop a fuller appreciation of both common problems and possible solutions in the realization of each of the rights contained in the Covenant.[17]

The Committee typically considers some five or six reports of States parties during any given session. If a State party which has submitted a report that is scheduled for the Committee's consideration at a given session seeks to defer the presentation of the report at the last minute, the Committee does not grant such a request, and proceeds with its consideration, even in the absence of a State party representative.

The Committee has also had to grapple with problems relating to the non-submission of reports and reports which are considerably overdue. In response to such situations, the Committee has notified States parties whose reports are long overdue of its intention to consider these reports at specified future sessions. If no report is forthcoming, the Committee then proceeds to consider the status of economic, social and cultural rights in the States concerned in the light of all available information.

Submission of reports and the pre-sessional working group

When States parties submit their reports, a standard procedure of consideration is followed by the Committee. Once received, processed and translated by the Secretariat, States parties' reports are initially reviewed by the Committee's five-person pre-sessional working group, which meets six months prior to a report being considered by the full Committee. The pre-sessional working group gives a preliminary consideration to the report, appoints one member to give particular consideration to each report, and develops written lists of questions based on disparities found in the reports which are submitted to the States parties concerned. The States parties are then required to reply in writing to these questions prior to their appearance before the Committee.

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[17] E/1989/22, annex III, General Comment No. 1 (1989), paras. 2-9.

Presentation of reports

Representatives of reporting States are strongly encouraged to be present at meetings when the Committee considers their reports. Such delegations are virtually always present during this process, which is generally carried out over a two-day period. Delegations first provide introductory comments and responses to the pre-sessional working group's written questions. This is followed by the provision of information by the United Nations specialized agencies relevant to the report under consideration. Committee members then put questions and observations to the State party appearing before it. A further period of time is then allowed for representatives of States parties to respond, generally not on the same day, to the questions and views put to them, as precisely as possible. If the questions cannot be adequately dealt with, the Committee often requests a State party to provide it with additional information for its consideration at forthcoming sessions.

Concluding observations: the Committee decides

Upon completion by the Committee of its analysis of reports and the appearance by States parties, the Committee concludes its consideration of States parties' reports by issuing "concluding observations", which constitute the decision of the Committee regarding the status of the Covenant in a given State party. Concluding observations are divided into five sections: (*a*) introduction; (*b*) positive aspects; (*c*) factors and difficulties impeding the implementation of the Covenant; (*d*) principal subjects of concern; (*e*) suggestions and recommendations. Concluding observations are adopted in private session, and are released to the public on the final day of each session.

On a number of occasions, the Committee has concluded that violations of the Covenant had taken place, and subsequently urged States parties to desist from any further infringements of the rights in question.

All human rights are subject to violation, and economic, social and cultural rights are no exception. The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights[18] list the following circumstances amounting to violations of the Covenant by a State party (principle 72): (*a*) it fails to take

[18] See footnote 4 above.

a step which the Covenant requires it to take; (*b*) it fails to remove promptly obstacles which it is obligated to remove to permit the immediate fulfilment of a right; (*c*) it fails to implement without delay a right which the Covenant requires it to provide immediately; (*d*) it wilfully fails to meet a generally accepted international minimum standard of achievement, which is within its powers to meet; (*e*) it applies a limitation to a right recognized in the Covenant in a manner not in accordance with the Covenant; (*f*) it deliberately retards or halts the progressive realization of a right, unless it is acting within a limitation permitted by the Covenant or it does so because of a lack of available resources; (*g*) it fails to submit reports as required under the Covenant.

While the Committee's concluding observations, in particular suggestions and recommendations, may not carry legally binding status, they are indicative of the opinion of the only expert body entrusted with and capable of making such pronouncements. Consequently, for States parties to ignore or not act on such views would be to show bad faith in implementing their Covenant-based obligations. In a number of instances, changes in policy, practice and law have been registered at least partly in response to the Committee's concluding observations.

In addition to concluding observations, letters from the chairperson are occasionally addressed to States parties informing them of the Committee's concerns.

The Committee also adopts draft decisions for eventual adoption by ECOSOC, when such approval is required. This is generally the case when the Committee requests a State party to issue it with an invitation to visit the country and provide the Government with technical and other assistance which it may require in order to implement more fully and enforce the norms of the Covenant. The Committee has to date twice requested invitations to visit the territories of States parties (Dominican Republic and Panama). Only in one of these instances (Panama), however, did the State issue the requisite invitation, and a mission took place in April 1995.

Generating interpretative clarity

(a) *General comments*

The Committee decided in 1988 to begin preparing "general comments" on the rights and provisions contained in the Covenant with a view to assisting States parties in fulfilling their reporting obligations and to provide greater interpretative clarity as to the intent,

meaning and content of the Covenant. The Committee further views the adoption of general comments as a means of promoting the implementation of the Covenant, by drawing the attention of States parties to insufficiencies disclosed by a large number of States parties' reports, and by inducing renewed attention to particular provisions of the Covenant on the part of States parties, United Nations agencies and others with a view to achieving progressively the full realization of the rights established under the Covenant.

General comments are a crucial means of generating jurisprudence, providing a method by which members of the Committee may come to an agreement by consensus regarding the interpretation of norms embodied in the Covenant.

As of April 1996, the Committee has adopted six general comments. These are:

—General Comment No. 1 (1989) on reporting by States parties;

—General Comment No. 2 (1990) on international technical assistance measures (art. 22)

—General Comment No. 3 (1990) on the nature of States parties' obligations (art. 2, para. 1, of the Covenant);

—General Comment No. 4 (1991) on the right to adequate housing (art. 11, para. 1, of the Covenant);

—General Comment No. 5 (1994) on persons with disabilities;

—General Comment No. 6 (1995) on the economic, social and cultural rights of older persons.

It is likely that the Committee will consider the adoption of additional general comments in the near future on issues such as the right to health; the domestic application of the Covenant; forced evictions and the Covenant; the non-discrimination clauses of the Covenant (art. 2, para. 2); the right to food; and others.

(b) *General discussions*

At each of its sessions, the Committee holds a "day of general discussion" on particular provisions of the Covenant, particular human rights or other themes of direct relevance to the Committee in order to develop its understanding of the issues concerned. The Committee has sought to draw on a wide range of expertise during these discussions

and has, therefore, engaged in dialogue with United Nations special rapporteurs, experts from relevant non-governmental organizations and representatives of United Nations specialized agencies.

General discussions to date have been held on the right to food (1989); the right to housing (1990); economic and social indicators (1991); the right to take part in cultural life (1992); the rights of the ageing and elderly (1993); the right to health (1993); the role of social safety nets as a means of protecting economic, social and cultural rights, with particular reference to situations involving major structural adjustment and/or transition to a free market economy (1994); human rights education (1994); the interpretation and practical application of the obligations incumbent on States parties (1995); and a draft optional protocol to the Covenant (1995).

7. Civil society and the work of the Committee

> *The World Conference on Human Rights affirms that extreme poverty and social exclusion constitute a violation of human dignity and that urgent steps are necessary to achieve better knowledge of extreme poverty and its causes, including those related to the problem of development, in order to promote the human rights of the poorest, and to put an end to extreme poverty and social exclusion and to promote the enjoyment of the fruits of social progress. It is essential for States to foster participation by the poorest people in the decision-making process by the community in which they live, the promotion of human rights and efforts to combat extreme poverty.*
>
> VIENNA DECLARATION AND PROGRAMME OF ACTION[19]
>
> (Part I, para. 25)

The Committee has long recognized the important contribution which can be made by civil society in the provision of information con-

[19] See footnote 10 above.

cerning the status of the Covenant within States parties. The Committee was the first treaty body to provide non-governmental organizations (NGOs) with the opportunity to submit written statements and make oral submissions dealing with issues relating to the enjoyment or non-enjoyment of the rights contained in the Covenant in specific countries.

On the first day of each session of the Committee, the afternoon meeting is set aside to give international and national NGOs and community-based organizations (CBOs) an opportunity to express their views about how the Covenant is or is not implemented by States parties. The Committee will receive oral testimony from NGOs as long as the information focuses specifically on the provisions of the Covenant, is of direct relevance to matters under consideration by the Committee, is reliable and is not abusive. In recent years, NGOs and CBOs have taken increased advantage of this procedure and provided the Committee with written, audio and video materials alleging the non-enjoyment of economic, social and cultural rights in States parties.

The Committee has indicated that the purposes of the NGO procedure are to enable it to inform itself as fully as possible, to examine the accuracy and pertinence of information which would most probably be available to it anyway, and to put the process of receiving NGO information on a more transparent basis.

NGOs and CBOs wishing to provide reliable and new information to the Committee may write to the secretariat of the Committee several months prior to the beginning of a particular session, with a specific request to intervene during the NGO procedure. Groups with written materials may also send these to the secretariat, and may attend Committee sessions. NGOs in consultative status with the United Nations or other groups which have relations with such NGOs also may attend Committee sessions. NGOs with consultative status may, in accordance with the relevant ECOSOC resolutions, submit written submissions to the Committee at any time. Committee sessions are generally held in public, with the exception of meetings at which it prepares its concluding observations, which are held privately.

The active participation of NGOs in the work of the Committee has also proven fundamental in ensuring the wide distribution of information about the Covenant and the Committee at the national and local levels. In many instances, these organizations have generated substantial media attention in their countries following the adoption of concluding observations regarding the States in question.

8. Towards a formal complaints procedure (optional protocol)

At present it is not possible for individuals or groups who feel that their rights under the Covenant have been violated to submit formal complaints to the Committee. The absence such procedure places significant constraints on the ability of the Committee to develop jurisprudence or case-law and, of course, greatly limits the chances of victims of abuses of the Covenant obtaining international redress.

There are numerous arguments supporting the adoption of a complaints procedure under the Covenant. These include the improved enjoyment by people of economic, social and cultural rights; a strengthening of international accountability of States parties; increased congruence in the legal standing and seriousness accorded to both International Covenants; a refinement of the rights and duties emerging from the provisions of the International Covenant on Economic, Social and Cultural Rights; and a structural and concrete affirmation of the indivisibility and interdependence of all human rights. It is also argued that such a procedure would encourage States parties to provide similar remedies at the local and national levels.

The Committee has devoted increasing attention to the possibility of elaborating such an optional protocol since 1990 and has discussed the issue at length on several occasions.[20] At its sixth session, in 1991, the Committee supported the drafting of an optional protocol "since that would enhance the practical implementation of the Covenant as well as the dialogue with States parties and would make it possible to focus the attention of public opinion to a greater extent on economic, social and cultural rights".[21]

The World Conference on Human Rights, held at Vienna in June 1993, gave added impetus to this initiative by asserting, in the Vienna Declaration and Programme of Action which it adopted, that the Committee should continue its efforts towards this end. The Committee has prepared a draft optional protocol, but it has yet to be officially adopted by the relevant United Nations organs.

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[20] See, for example, P. Alston, "Establishing a right to petition under the Covenant on Economic, Social and Cultural Rights", *Collected Courses of the Academy of European Law: The Protection of Human Rights in Europe* (Florence, European University Institute), vol. IV, book 2 (1993), p. 115

[21] E/1992/23, para. 362.

Many other initiatives have also addressed the desirability of including a complaints procedure under the International Covenant on Economic, Social and Cultural Rights, and these have given added support to this means of strengthening this pivotal human rights treaty.[22]

Pending the addition of an optional protocol, beneficiaries of the rights contained in the Covenant may still have recourse to the general procedures of the Committee, and may utilize what has been called an "unofficial petition procedure" based on the modalities of the Committee.[23]

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[22] See F. Coomans and G. J. H. van Hoof, eds., *The Right to Complain about Economic, Social and Cultural Rights: Proceedings of the Expert Meeting on the Adoption of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights* (Utrecht, 25-28 January 1995) (Utrecht, Netherlands Institute of Human Rights, 1995).

[23] See M. Craven, "Towards an unofficial petition procedure: A review of the role of the UN Committee on Economic, Social and Cultural Rights", *Social Rights as Human Rights: A European Challenge*, K. Drzewicki, C. Krause and A. Rosas, eds. (Abo/Turku (Finland), Abo Akademi University, Institute for Human Rights, 1994), p. 91.

ANNEXES

ANNEX I

International Covenant on Economic, Social and Cultural Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1996

ENTRY INTO FORCE: 3 January 1976, in accordance with article 27

PREAMBLE

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all the members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that the rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right sahll include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development

and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(*a*) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(*b*) Safe and healthy working conditions;

(*c*) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(*d*) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 8

1. The States Parties to the present Covenant undertake to ensure:

(*a*) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(*b*) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(*c*) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary

in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(*d*) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organise to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(*a*) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(*b*) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(*a*) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(*b*) The improvement of all aspects of environmental and industrial hygiene;

(*c*) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(*d*) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(*a*) Primary education shall be compulsory and available free to all;

(*b*) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(*c*) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(*d*) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(*e*) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the

education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

(*a*) To take part in cultural life;

(*b*) To enjoy the benefits of scientific progress and its applications;

(*c*) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2. (*a*) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(*b*) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the

specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of region l meetings and technical meetings for the purpose of consultation ·.d study organized in conjunction with the Governments concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provision of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(*a*) Signatures, ratifications and accessions under article 26;

(*b*) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

ANNEX II

States parties to the International Covenant on Economic, Social and Cultural Rights

(As at 12 April 1996)

1. Afghanistan
2. Albania
3. Algeria
4. Angola
5. Argentina
6. Armenia
7. Australia
8. Austria
9. Azerbaijan
10. Barbados
11. Belarus
12. Belgium
13. Benin
14. Bolivia
15. Bosnia and Herzegovina
16. Brazil
17. Bulgaria
18. Burundi
19. Cambodia
20. Cameroon
21. Canada
22. Cape Verde
23. Central African Republic
24. Chad
25. Chile
26. Colombia
27. Congo
28. Costa Rica
29. Côte d'Ivoire
30. Croatia
31. Cyprus
32. Czech Republic
33. Democratic People's Republic of Korea
34. Denmark
35. Dominica
36. Dominican Republic
37. Ecuador
38. Egypt
39. El Salvador
40. Equatorial Guinea
41. Estonia
42. Ethiopia
43. Federal Republic of Yugoslavia (Serbia and Montenegro)
44. Finland
45. France
46. Gabon
47. Gambia
48. Georgia
49. Germany
50. Greece
51. Grenada
52. Guatemala
53. Guinea
54. Guinea-Bissau
55. Guyana
56. Honduras
57. Hungary
58. Iceland
59. India
60. Iran (Islamic Republic of)
61. Iraq
62. Ireland
63. Israel
64. Italy
65. Jamaica
66. Japan
67. Jordan
68. Kenya
69. Kyrgyzstan
70. Latvia
71. Lebanon
72. Lesotho
73. Libyan Arab Jamahiriya
74. Lithuania
75. Luxembourg
76. Madagascar
77. Malawi
78. Mali
79. Malta
80. Mauritius
81. Mexico
82. Mongolia
83. Morocco
84. Namibia

85. Nepal
86. Netherlands
87. New Zealand
88. Nicaragua
89. Niger
90. Nigeria
91. Norway
92. Panama
93. Paraguay
94. Peru
95. Philippines
96. Poland
97. Portugal
98. Republic of Korea
99. Republic of Moldova
100. Romania
101. Russian Federation
102. Rwanda
103. Saint Vincent and the Grenadines
104. San Marino
105. Senegal
106. Seychelles
107. Slovakia
108. Slovenia
109. Solomon Islands
110. Somalia
111. Spain
112. Sri Lanka
113. Sudan
114. Suriname
115. Sweden
116. Switzerland
117. Syrian Arab Republic
118. The former Yugoslav Republic of Macedonia
119. Togo
120. Trinidad and Tobago
121. Tunisia
122. Uganda
123. Ukraine
124. United Kingdom of Great Britain and Northern Ireland
125. United Republic of Tanzania
126. Uruguay
127. Uzbekistan
128. Venezuela
129. Viet Nam
130. Yemen
131. Zaire
132. Zambia
133. Zimbabwe

ANNEX III

NGO participation in the activities of the Committee on Economic, Social and Cultural Rights

At its eighth session, in May 1993, the Committee adopted the following procedure regarding the participation of non-governmental organizations in its activities:[a]

A. *Written information*

1. The Committee reiterates its long-standing invitation to NGOs to submit to it in writing, at any time, information regarding any aspect of its work.

B. *Oral information*

2. In addition to the receipt of written information, a short period of time will be made available at the beginning of each session of the pre-sessional working group to provide NGOs with an opportunity to submit relevant oral information to the members of the working group.

3. Furthermore, the Committee will set aside part of the first afternoon at each of its sessions to enable it to receive oral information provided by NGOs. Such information should: (*a*) focus specifically on the provisions of the International Covenant on Economic, Social and Cultural Rights; (*b*) be of direct relevance to matters under consideration by the Committee; (*c*) be reliable; (*d*) not be abusive. The relevant meeting will be open and will be provided with interpretation services, but will not be covered by summary records. The purposes are: to enable the Committee to inform itself as fully as possible; to probe the accuracy and pertinence of information which would most probably be available to it anyway; and to put the process of receiving NGO information on a more transparent and open basis than is permitted by the current approach.

4. NGOs wishing to present oral information should inform the Committee in advance. In cases in which the Committee receives more expressions of interest than can be dealt with in the limited time available, the Chairperson of the Committee, in consultation with the Bureau, shall determine on an objective basis which NGOs will be invited to make an oral presentation.

5. To the extent that information provided to the Committee in writing under these procedures is referred to by any member of the Committee in questions posed to the State party, the relevant information should be available for consultation by the Government concerned and all other interested parties.

6. The Committee requests its Chairperson, in conjunction with the secretriat, to make these procedures as widely known as possible.

The Committee agreed that this procedure would be reflected accordingly and in these terms in its rules of procedure.

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[a] E/1994/23, para. 354.

Requests for further information about the Covenant or the work of the Committee, or information to be brought to the attention of the Committee, may be addressed to:

Secretary
Committee on Economic, Social and Cultural Rights

Centre for Human Rights
United Nations Office at Geneva
8-14, avenue de la Paix
1211 Geneva 10, Switzerland

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fax: (41 22) 917 0099
e-mail: atikhonov.hchr@unog.ch

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